

Liability For Outpatient Suicide in Tennessee

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INTRODUCTION

The law is clearly evolving toward imposing liability on physicians for their negligent acts or omissions in treating outpatients who present a foreseeable risk of suicide or other self-harm. However, situations that will either sever or terminate the causal link between a doctor's duty and a patient's injury or death. When this occurs, liability by the physician is generally not found since there must be an attributable connection between the physician's act or omission and the harm to the patient.¹ This article discusses physician liability for outpatient suicide or self-harm in Tennessee.

DEFINITIONS

Malpractice is defined as negligence on the part of a professional. A physician's failure to exercise the degree of care and skill that a physician or surgeon of the same medical specialty would use under similar circumstances (standard of care), is defined as malpractice.² Tennessee uses a local standard of care for physicians. Only physicians from Tennessee or a bordering state can testify as experts, unless the court finds that a local expert is not available.³ To prove negligence one must establish the following *elements*:

1. The *existence of a duty* on the part of the defendant to conform to a specific standard of conduct for the protection of the plaintiff against an unreasonable risk of injury,
2. A *breach* of that duty by the defendant,

3. That the breach of duty by the defendant was the *actual and proximate cause* of the plaintiff's injury; and

4. *Damage* to the plaintiff's person or property.⁴

An action for malpractice must include evidence of all elements in order to be successful; any omission or failure to prove one of these factors will defeat the action. Most malpractice cases focus on the first and second elements of negligence. However, recent cases have focused on the fourth element, "proximate cause," particularly as it relates to malpractice about outpatient suicides. Proximate cause is often a confusing term. Mere evidence of a negligent act committed by a physician with a duty of care resulting in a patient's suicide or resulting self-harm may not be sufficient to maintain a cause of action for malpractice. There must be a causal link between the negligent act and the patient's injury, and the presence of any intervening agent or event that comes between the negligent act and injury may sever this causal relationship. In other words, there must be proximate cause.¹

In analyzing proximate cause, courts take into account the concept of foreseeability. Until recently, physicians treating outpatients were not held liable for suicide or resulting self-harm because the physician saw the patient in the office for only a few hours a week. This is in contrast to a physician treating a hospitalized

patient and as such, has more control over the patient. On the other hand, there is a growing legal trend recognizing that although the attending physician of a hospitalized patient is in a better situation to anticipate the patient's suicidal behavior, this does not mean the physician treating an outpatient has no basis on which to foresee a patient's suicide and there is nothing the physician can do to prevent it. These courts have held that the mere fact that a person is an outpatient does not relieve a physician from liability for a negligent act or omission. They hold that the suicide of an outpatient does not relieve the physician of liability if the suicide was foreseeable, notwithstanding the fact that the suicide was an intentional and deliberate act.⁵

COURT CASES

In the past, Tennessee courts have followed the older rule established in *Weathers v Pilkington*, 754 SW 2d 75 (Tenn. Ct. of App. 1988). Here the court stated that a "willful, calculated, deliberate act" of suicide by an outpatient could cut off the physician's liability for negligence unless the patient was "not a responsible human agency." In *Weathers*, the spouse brought suit against a physician arising from his refusal to involuntarily commit her husband. The husband committed suicide 17 days later. The court stated that the sole question was whether there was evidence the alleged negligence by the physician was the proximate cause of the death of her husband. The court concluded that "...an act of suicide breaks the chain

of causation unless the decedent's reasoning and memory were so far obscured that he did not know and understand what he was doing and was not therefore, a responsible human agency."⁶

More recent Tennessee cases have restated this position with some clarification. In *White v Lawrence*, 975 SW 2d 525 (Tenn.1998), the patient's estate brought a medical malpractice action claiming an alcoholic patient's suicide was caused by the physician's prescription and surreptitious administration of disulfiram (Antabuse) and this led to his suicide. The court stated that there was a genuine issue of fact to whether the patient's suicide was foreseeable from the physician's alleged negligence. The court stated:

"...foreseeability or likelihood of a suicide does not necessarily depend upon the mental capacity of the deceased at the time the suicide is committed. The fact that the deceased was not insane or bereft of reason did not necessarily lead to the conclusion that the suicide, which is the intervening cause, was unforeseeable. ...[T]he

crucial inquiry was whether the physician's negligent conduct led to or made it reasonably foreseeable that the deceased would commit suicide. If so, the suicide was not an independent intervening cause breaking the chain of legal causation."⁷

CONCLUSIONS

Physicians treating outpatients who pose a foreseeable risk of suicide should be aware of the growing trend of courts to impose a duty on the physician to take reasonable measures to prevent the foreseeable suicides of or self-harm by outpatients. In the past, Tennessee followed the older rule that evaluated the mental status of the patient at the time of suicide in determining foreseeability and proximate cause. However, recent Tennessee cases suggest that courts may find proximate cause in outpatient suicide without analyzing the mental condition of the patient. ■

Reference

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6. *Weathers v Pilkington*, 754 SW 2d 75 (Tenn. Ct. of App. 1988).
7. *White v Lawrence*, 975 SW 2d 525 (Tenn.1998).

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